

**MISSISSIPPI COMMISSION ON ENVIRONMENTAL QUALITY  
PERMIT REGULATIONS FOR THE CONSTRUCTION AND/OR  
OPERATION OF AIR EMISSIONS EQUIPMENT**

**APC-S-2**

**I. GENERAL REQUIREMENTS**

A. Definitions.

1. Regulation APC-S-5, "Regulations for the Prevention of Significant Deterioration of Air Quality", which were adopted by the Commission on June 28, 1990, provides in Section 2. thereof for the adoption of 40 CFR 52.21 as official Regulations of the State of Mississippi except for the changes set forth in Section 3 of Regulation APC-S-5. Therefore the definitions set forth in 40 CFR 52.21(b), including the definitions of "major stationary source", "major modification", and "net emissions increase" as used in this Regulation APC-S-2 are incorporated by reference and shall have the same definition in this Regulation, except for the changes set forth in Section 3. of Regulation APC-S-5 and except for changes noted herein.
2. "Applicable Rules and Regulations." Any Commission Regulations concerning and/or affecting air emissions and air quality established pursuant to State Law.
3. "Commission." The Mississippi Commission on Environmental Quality.
4. "Corporate Officer." Corporate Officer means (i) A president, secretary, treasurer, or vice-president of the company or corporation in charge of a principal business function, or any other person who performs similar policy- or decision-making functions for the company or corporation, or (ii) the manager of one or more manufacturing, production, or operating facilities employing more than 250 persons or having gross annual sales or expenditures exceeding \$25 million (in 1980 dollars), if authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures.
5. "DEQ." The Mississippi Department of Environmental Quality.
6. "EPA." The U.S. Environmental Protection Agency.
7. "Existing Facility." Any equipment, machines, devices, articles, contrivances or installations, built, installed or erected prior to May 11, 1972, that emits dust, fumes, mist, smoke, other particulate matter, vapor, gas or any combination thereof from the same process or related operation.
8. "Federal Act." The Federal Clean Air Act as amended in 1990, and any subsequent amendments.
9. "Fixed Capital Cost." The capital needed to provide all the depreciable components.
10. "Light commercial area." An area zoned for commercial use, or, in the absence of any local

zoning ordinances, an area predominantly used for wholesale and retail trade in goods and services.

11. "Moderate Modification." Any modification which would constitute a major modification under Commission Regulation APC-S-5, "Regulations for the Prevention of Significant Deterioration of Air Quality", if the potential emissions increase was used in place of the net emissions increase in emissions calculations, or a major modification as defined by Section VI.E. of this Regulation APC-S-2 if impacting a nonattainment area.
12. "Moderate Stationary Source." Any facility which would constitute a major stationary source under Commission Regulation APC-S-5, "Regulations for the Prevention of Significant Deterioration of Air Quality", if potential uncontrolled emissions were used in place of actual emissions in emissions calculations, or a major stationary source as defined by Section VI. E. of this Regulation APC-S-2 if impacting a nonattainment area.
13. "Modification." Any physical change in or change in the method of operation of a facility which increases the actual emissions or the potential uncontrolled emissions of any air pollutant subject to regulation under the Federal Act emitted into the atmosphere by that facility or which results in the emission of any air pollutant subject to regulation under the Federal Act into the atmosphere not previously emitted. A physical change or change in the method of operation shall not include:
  - (a) Routine maintenance, repair, and replacement;
  - (b) Use of an alternative fuel or raw material by reason of an order under Sections 2 (a) and (b) of the Federal Energy Supply and Environmental Coordination Act of 1974 (or any superseding legislation) or by reason of a natural gas curtailment plan pursuant to the federal Power Act;
  - (c) Use of an alternative fuel by reason of an order or rule under Section 125 of the Federal Act;
  - (d) Use of an alternative fuel or raw material by a stationary source which:
    - (1) The source was capable of accommodating before January 6, 1975, unless such change would be prohibited under any federally enforceable permit condition which was established after January 6, 1975, pursuant to 40 CFR 52.21 or under regulations approved pursuant to 40 CFR 51.166; or
    - (2) The source is approved to use under any permit issued under 40 CFR 52.21 or under regulations approved pursuant to 40 CFR 51.166;
  - (e) An increase in the hours of operation or in the production rate unless such change would be prohibited under any federally enforceable permit condition which was established after January 6, 1975, pursuant to 40 CFR 52.21 or under regulations approved pursuant to 40 CFR subpart I or 40 CFR 51.166; or
  - (f) Any change in ownership of the stationary source.
14. "Modified Permit." Any permit already effective which is altered substantively as a result of the Permit Board's determination of the need for such alteration. Alterations to correct typographical errors or to clarify requirements shall not be considered substantive changes

and, therefore, are not modifications for the purposes of this definition.

15. "New Facility." Any equipment, machines, devices, articles, contrivances or installations, built or erected on or after May 11, 1972, or any existing facility modified or reconstructed on or after said date that emits dust, fumes, mist, smoke, other particulate matter, vapor, gas or any combination thereof from the same process or related operation.
16. "Permit Board." The Mississippi Environmental Quality Permit Board.
17. "Potential emissions increase." Any calculated increase in potential uncontrolled emissions from a particular physical change or change in method of operation of a stationary source if contemporaneous decreases in actual emissions are not considered in the calculation.
18. "Potential uncontrolled emissions." The emission rate of a stationary source calculated using the maximum capacity of the source and the most stringent of the following:
  - (a) The applicable emission standards set forth in the EPA-approved State Implementation Plan (primarily consisting of the applicable EPA-approved provisions of Commission Regulation APC-S-1, "Air Emissions Regulations for the Prevention, Abatement, and Control of Air Contaminants").
  - (b) The applicable standards as set forth in 40 CFR Parts 60 and 61 which have been adopted by reference in Sections 6. and 8. of Regulation APC-S-1, "Air Emission Regulations for the Prevention, Abatement, and Control of Air Contaminants", as official Regulations of the State of Mississippi.
  - (c) Any other Federally enforceable emission limitation or permit condition or emission standard.
  - (d) The emission rate of the source without any air pollution control equipment or operational limitation.
19. "Reconstruction". The replacement of components of any existing facility to such an extent that:
  - (a) The fixed capital cost of the new components exceeds 50 percent of the fixed capital cost that would be required to construct a comparable entirely new facility; and
  - (b) It is technologically and economically feasible to meet the applicable standards for a new facility.
20. "Recreational area." Recreational area means:
  - (a) A national, state, county, or city designated park; or
  - (b) An outdoor recreational area, such as a golf course or swimming pool, owned by a city, county, or other public agency.
21. "Residential area." Residential area means:
  - (a) A group of 20 or more single family dwelling units on contiguous property and

having an average density of one or more units per acre, or

- (b) A group of 40 or more single family dwelling units on contiguous property and having an average density of one or more units per acre, or
  - (c) A subdivision containing at least 20 constructed houses, in which the subdivision plat is recorded in the chancery clerk's office of the appropriate county.
- 22. "State Law." The Mississippi Air and Water Pollution Control Law, specifically, Miss. Code Ann §§ 49-17-1 through 49-17-43, and any subsequent amendments.
  - 23. "State Permit to Operate or State Operating Permit." A permit issued under State Law to operate air emissions equipment, exclusive of Title V permits.
  - 24. "Synthetic Minor Source." Any facility which would otherwise constitute a major source under Commission Regulation APC-S-6, "Air Emissions Operating Permit Regulations for the Purposes of Title V of the Federal Clean Air Act", except that the owner or operator of the facility elects for federally enforceable emissions limitations which may include permit conditions restricting hours of operation, or type or amount of material stored, combusted or processed, or establishing more stringent air pollution control efficiency requirements to lower allowable emissions for air pollutants in the State Permit to Operate below applicability thresholds for a Title V major source. (The definition of a major source set forth in Commission Regulation APC-S-6, "Air Emissions Operating Permit Regulations for the Purposes of Title V of the Federal Clean Air Act" is incorporated herein and adopted by reference.)
  - 25. "Title V." The air operating permit program mandated in Title V of the 1990 amendments to the Federal Clean Air Act, codified in 42 U.S.C. § 7661.
  - 26. "Title V permit." Any permit or group of permits covering a Title V source that is issued, renewed, amended, or revised pursuant to Commission Regulation APC-S-6.
  - 27. "Title V sources." Title V sources include the following:
    - (a) Any major source;
    - (b) Any source, including an area source, subject to a standard, limitation or other requirement under Section 111 of the Federal Act;
    - (c) Any source, including an area source, subject to a standard or other requirement under Section 112 of the Federal Act, except that a source is not required to obtain a permit solely because it is subject to regulations or requirements under Section 112(r) of the Federal Act;
    - (d) Any affected source; and
    - (e) Any source in a source category designated by the Administrator.

B. General Permit Requirements.

- 1. Unless otherwise provided by Section XIII, or other provisions of these Regulations, any new, reconstructed or modified facility must have a permit to construct before beginning

construction, reconstruction, or modification and a State Permit to Operate before beginning operations.

2. All applications must be submitted on the form supplied by the Permit Board.
3. The Permit Board may require the applicant to submit any additional information which the Permit Board deems relevant to its decision on the permit application.
4. Permit Types. The Permit Board will issue two types of permits, a Permit to Construct air emissions equipment and a State Permit to Operate such equipment. In the case of new facilities, application may be made for both permits simultaneously on the form provided by the Permit Board.
5. A permit issued by the Permit Board will generally be for a specific site identified in the application. For portable facilities which will be located only temporarily at a site or sites, the Permit Board may issue a statewide permit.
6. It is the responsibility of the applicant/permittee to obtain all other approvals, permits, clearances, easements, agreements, etc., which may be required.
7. The provisions of a permit are severable. If any provision of a permit, or the application of any provision of a permit to any circumstances, is challenged or held invalid, the validity of the remaining permit provisions and/or portions thereof or their application to other persons or sets of circumstances, shall not be affected thereby.
8. In the event of a conflict between any of the requirements of these regulations and/or applicable requirements of any other regulation or law, the more stringent requirements shall be applied.

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	Date Submitted to EPA	Date Approved by EPA	Federal Register
Original Reg:	FEB 4, 1972	MAY 31, 1972	37 FR 10875
1st Revision:	MAR 16, 1978	FEB 07, 1979	44 FR 7713
2nd Revision:	JUN 14, 1991	SEP 15, 1994	59 FR 47258
3rd Revision:	JAN 26, 1994	MAY 2, 1995	60 FR 21442

## II. GENERAL STANDARDS APPLICABLE TO ALL PERMITS

- A. Except as provided for in the "Air Emissions Operating Permit Regulations for the Purposes of Title V of the Federal Clean Air Act" (APC-S-6), no permit shall be issued unless the applicant has complied with applicable requirements of the Commission Air Emission Regulations for the Prevention, Abatement, and Control of Air Contaminants (APC-S-1); the Commission Permit Regulations for the Construction and/or Operation of Air Emissions Equipment (APC-S-2); the Commission Regulations for the Prevention of Air Pollution Emergency Episodes (APC-S-3); the Commission Ambient Air Quality Standards (APC-S-4) except as provided for in Section VI.E. herein; the Commission Regulations for the Prevention of Significant Deterioration of Air Quality (APC-S-5), any amendments to these Rules and Regulations, and additional relevant Rules and Regulations promulgated by the Commission and/or Permit Board.
- B. General Provisions.
1. Any air emissions facility which holds a valid Title V permit shall be deemed to be in compliance with the requirements regarding a State Permit to Operate contained in APC-S-2 and State Law.
  2. Any air emissions facility required to obtain a Title V permit shall apply for a State Permit to Operate in accordance with APC-S-2 to be issued for a term of either (1) twelve months from the effective startup date of the facility or (2) until the facility obtains its Title V permit, whichever is earlier.
  3. The Permit Board may require a permittee to submit an application for a Title V permit at any time the permittee becomes subject to Title V. The Permit Board may require a permittee to submit a Title V application even though the permittee has previously submitted an application for renewal of its State Operating Permit.
  4. When requested by the Permit Board, an applicant shall submit information to demonstrate it has the financial resources to comply with the terms and conditions of the permit.
  5. When requested by the Permit Board, an applicant shall submit information on the applicant's compliance history to provide reasonable assurance that it will comply with the terms and conditions of the permit.
  6. The knowing submittal of a permit application with false information may serve as the basis for the Permit Board to void the permit issued pursuant thereto or subject the applicant to penalties for operating without a valid permit pursuant to State Law.
  7. Acceptance by the Permit Board of a permit application does not constitute a waiver of the DEQ's right to assess appropriate penalties against the applicant pursuant to State Law for constructing or operating without a valid permit.
  8. The issuance of a permit does not release the permittee from liability for constructing or operating air emissions equipment in violation of any applicable statute, rule or regulation of state or federal environmental authorities.

9. Applicants for all permits to construct or operate, or to renew a State Permit to Operate, shall specify in their application the air emission rate for each air pollutant subject to regulation under the Federal Act that can be reasonably expected to be emitted into the air as a result of operations from the facility.
10. Each application must be signed by the applicant. If the applicant is a corporation, it must be signed by a corporate officer. If the applicant is a partnership, it must be signed by a partner with authority to bind the partnership. In the case of a governmental agency, the application must be signed by the facility manager or senior staff officer responsible for the installation's or facility's environmental compliance. The signature of the applicant shall constitute an agreement that the applicant assumes the responsibility for any alterations, additions or changes in operation that may be necessary to achieve and maintain compliance with all applicable Rules and Regulations.
11. The Permit Board may, in any permit, establish limitations and requirements on the emission of air pollutants and on other parameters of a facility to assure that the requirements of Applicable Rules and regulations are met subject to Miss. Code Ann. §49-17-34(2) and (3). Where the Permit Board does not establish limitations and requirements in a permit, the permit shall provide that the rates of emissions and other operating condition and parameters specified in the application shall be the applicable limitations and requirements.
12. the Permit Board may, in any permit, establish requirements for compliance testing by emissions sampling and analysis, for emissions and operation monitoring, and for reporting of the results from such testing and monitoring, and for reporting of the results from such testing and monitoring. The Permit Board shall consider factors in establishing such requirements as follows:
  - (a) Applicable Rules and Regulations which address testing, monitoring, and reporting;
  - (b) Prior results of testing and monitoring at the facility;
  - (c) The applicant's compliance history;
  - (d) The size of the facility;
  - (e) The cost of the testing, monitoring, reporting; and
  - (f) The potential environmental impact of the facility.
13. The Permit Board may, in any permit, subdivide the permit requirements to facilitate their expression so as to adequately define, describe, and encompass emissions-producing units, processes, and other portions of a facility subject to the requirements.
14. The Permit Board may, in any permit to construct, require the permittee to perform special environmental monitoring for the purpose of detecting, quantifying, and determining the impact of pollutants existing prior to the date the permittee begins to emit when, during the review of the application and the public participation process, questions arise, with regard to separate environmental impacts of pollution raised by the applicant or the Department and which cannot be determined by available scientific data and scientific methods. The Permit Board may, in any State Permit to Operate, require the permittee to perform special environmental monitoring for the purpose of detecting, quantifying, and determining the impact of pollutants emitted by the permittee when such monitoring is necessary because

traditional air quality monitoring techniques will not measure the quality of the environment nor the impact of the pollutants emitted into the environment. Such special monitoring may include, but is not limited to, parameters such as ambient concentration, deposition, bio-accumulation in flora and fauna, etc.

15. No permit for the construction or relocation of equipment which will cause the issuance of air contaminants shall be issued when said equipment cannot comply with buffer zone requirements as follows:
  - (a) All sources of air emissions must be at least 150 feet from the nearest residential or recreational area.
  - (b) All sources of air emissions at asphalt plants utilizing conventional technology for the control of air contaminants must be at least 1500 feet from the nearest residential, recreational or light commercial area.
  - (c) All sources of air emissions at asphalt plants utilizing best available technology for the control of air contaminants must be at least 600 feet from the nearest residential, recreational or light commercial area.
  - (d) Rendering plants or other similar operations which may cause objectionable odors must be at least 1500 feet from the nearest residential, recreational or light commercial area and be located in compliance with Miss. Code Ann. § 41-51-19.
  - (e) Notwithstanding (a) above, incinerators must be at least 150 feet from any dwelling or from any light commercial building not owned by the applicant.
  - (f) Where buffer zone requirements cannot be met, the Permit Board will consider requests for exceptions to, or variances from, these requirements upon the applicant's submittal of sufficient proof that affected property owners within the subject buffer zone have had timely and sufficient notice of the proposed facility. Any comments received as a result of such notice shall be considered prior to action upon any request for exceptions to, or variances from, the buffer zone requirements.
  - (g) The Permit Board may establish buffer zone requirements for facilities not included in 15(a)-(f) considering factors including but not limited to, the type of emissions, the quantity of emissions, the physical characteristics of the facility (such as the location) and such other factors that the Permit Board deems appropriate to protect human health, welfare, or the environment.
16. Each permit issued shall include the following:
  - (a) It shall not be a defense for a permittee in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of the permit unless halting or reducing activity would create an imminent and substantial endangerment threatening the public health and safety of the lives and property of the people of this state.
  - (b) The permit and/or any part thereof may be modified, revoked, reopened, and reissued, or terminated for cause. Sufficient cause for a permit to be reopened shall exist when an air emissions facility becomes subject to Title V. The filing of a



request by the permittee for a permit modification, revocation and reissuance, or termination, or of a notification of planned changes or anticipated noncompliance does not stay any permit condition.

- (c) The permit does not convey any property rights of any sort, or any exclusive privilege.
- (d) The permittee shall furnish to the DEQ within a reasonable time any information the DEQ may request in writing to determine whether cause exists for modifying, revoking and reissuing, or terminating the permit or to determine compliance with the permit. Upon request, the permittee shall also furnish to the DEQ copies of records required to be kept by the permit or, for information claimed to be confidential, the permittee shall furnish such records to the DEQ along with a claim of confidentiality. The permittee may furnish such records directly to the Administrator along with a claim of confidentiality.

C. Permit Suspension or Revocation

After notice and opportunity for hearing, the Permit Board may modify, suspend or revoke in whole or in part any permit issued pursuant to these regulations for good cause shown including, but not limited to, the following:

1. Persistent violation of any of the terms or conditions of the permit;
2. Obtaining the permit by misrepresentation or failure to disclose fully all relevant facts; or
3. A change in federal, state or local laws or regulations that require either a temporary or permanent reduction or elimination of previously authorized air emissions.

D. Permit Modification Due to Modification in Facilities

When a permittee who holds a State Permit to Operate files an application to modify its facilities, the Permit Board may consider the application as an application to construct and an application to modify the existing State Operating Permit to allow the operation of additional facilities. The requirements for modification of the State Permit to Operate shall be the same as for issuance of a separate State Permit to Operate for the new or expanded air emissions.

E. Modification of Permits Without Modification of Facilities

The terms and conditions of a previously issued permit to construct or State Permit to Operate may, upon request of the permittee, be modified if the Permit Board finds that those terms and conditions are no longer necessary to insure compliance with all applicable rules and regulations or that the modifications sought by the permittee result in operating conditions that are protective of human health and the environment.

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	Date Submitted to EPA	Date Approved by EPA	Federal Register
Original Reg:	FEB 4, 1972	MAY 31, 1972	37 FR 10875
1st Revision:	MAR 16, 1978	FEB 07, 1979	44 FR 7713
2nd Revision:	NOV 25, 1981	MAR 20, 1986	51 FR 9653
3rd Revision:	JUL 26, 1988	NOV 13, 1989	54 FR 47211
4th Revision:	JUN 14, 1991	SEP 15, 1994	59 FR 47258
5th Revision:	JAN 26, 1994	MAY 2, 1995	60 FR 21442

### III. STANDARDS FOR GRANTING A STATE PERMIT TO OPERATE AN EXISTING FACILITY

An existing facility that can adequately demonstrate, either by stack emissions data, by acceptable mathematical methods, by visible emissions evaluation, or by a combination of these methods, as described in Sections VII and VIII, that emissions from the facility are in compliance with all applicable Rules and Regulations and can also adequately demonstrate that the operation of their facility will not interfere with the attainment and maintenance of State and National Ambient Air Quality Standards will be granted a State Permit to Operate, for five (5) years or a shorter period of time deemed appropriate by the Permit Board provided requirements of Section II have also been met.

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1st Revision:	MAR 16, 1978	FEB 07, 1979	44 FR 7713
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**IV. APPLICATION FOR PERMIT TO CONSTRUCT AND STATE PERMIT TO OPERATE NEW FACILITY**

- A. All engineering plans and specifications required by DEQ must bear the signature, registration number, and seal of a professional engineer registered in the State of Mississippi.
- B. Failure to apply for a Permit to Construct and a State Permit to Operate a new facility or the premature start of construction without the written consent of the Permit Board shall constitute a violation of the State Law and all violators shall be subject to prosecution.
- C. Information Required.
1. The Permit Board may require each application for a Permit to Construct a new facility be accompanied by two (2) complete sets of site drawings, construction drawings, design calculations and specifications.
  2. Upon request by the Permit Board, the applicant shall furnish any additional information necessary to evaluate the design adequacy of the new facility.
  3. The Permit Board may require the applicant to predict the impact of emissions on air quality using air quality models as referenced in Section VI.B. herein.

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## **V. PUBLIC PARTICIPATION AND PUBLIC AVAILABILITY OF INFORMATION**

- A. For any application for a Prevention of Significant Deterioration Permit to Construct, the DEQ will follow public information procedures specified in Commission Regulation APC-S-5, "Regulations for the Prevention of Significant Deterioration of Air Quality", and any other applicable Rules and Regulations set forth herein.
- B. For any application for a Title V Permit to Operate, the DEQ will follow public information procedures specified in Commission Regulation APC-S-6, "Air Emission Operating Permit Regulations For The Purposes Of Title V Of The Federal Clean Air Act".
- C. For any application for a Permit to Construct a new moderate stationary source, a moderate modification, or a new major stationary source impacting a nonattainment area as defined in Section VI.E., the DEQ will provide opportunity for public comment on information submitted by the owner and operator. The public information will include the DEQ's analysis of the effect of construction or modification on ambient air quality, including the DEQ's recommendation for permit issuance or denial and shall include, as a minimum the following:
  - 1. Availability for public inspection in at least one location in the area affected of the information submitted by the owner or operator and of DEQ's analysis of the effect on air quality;
  - 2. A 30-day period for submittal of public comment; and
  - 3. A notice, by prominent advertisement in the area affected, of the location of the source information and analysis.

A copy of the notice will be sent to the Administrator of EPA through Region IV, and to all other State and local air pollution control agencies having jurisdiction in the region in which such new or modified installation will be located. A permit to construct issued pursuant to this paragraph is federally enforceable.

- D. For any application for a State Permit to Operate a synthetic minor source, including an application for renewal of the State Permit to Operate a synthetic minor source, the DEQ will provide opportunity for public comment on information submitted by the owner or operator. The public information will include the application submitted, the DEQ's recommendation for permit issuance or denial (including the draft permit) and shall include, as a minimum the following:
  - A. Availability for public inspection in at least one location in the area affected of the information submitted by the owner or operator and of DEQ's recommendation and the draft permit;
  - 2. A 30-day period for submittal of public comment; and
  - 3. A notice, by prominent advertisement in the area affected, of the location of the source information.

A copy of the notice will be sent to the Administrator of EPA through Region IV, and to all other State and local air pollution control agencies having jurisdiction in the region in which the source is or will be located. A State Permit to Operate issued to a synthetic minor source is federally enforceable.

- E. For any request for coverage under a general permit to construct a moderate source or moderate modification, the public information procedures described in C. above will be followed except that the public information will also include the request for coverage. A general permit to construct which covers a moderate source or moderate modification is federally enforceable.
- F. For any request for coverage under a general permit to operate a synthetic minor source, the public information procedures described in D. above will be followed except that the public information will also include the request for coverage. A general permit to operate which covers a synthetic minor source is federally enforceable.
- G. In addition to A. through F. above, the Permit Board may provide notice to the public and provide opportunity for public comment on any application for a Construction Permit or State Operating Permit.
- H. In addition to public hearings on PSD permits, as provided for in Commission Regulation APC-S-5, "Regulations for the Prevention of Significant Deterioration of Air Quality", the Permit Board may hold a public hearing on any application for a Construction Permit or State Operating Permit if it determines that there is sufficient interest in the application.

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1st Revision:	MAR 16, 1978	FEB 07, 1979	44 FR 7713
2nd Revision:	JUN 14, 1991	SEP 15, 1994	59 FR 47258
3rd Revision:	JAN 26, 1994	MAY 2, 1995	60 FR 21442

## **VI. APPLICATION REVIEW**

- A. Standards for Approving an Application for a Permit to Construct and a State Permit to Operate a New Facility.
1. A new facility shall be designed and constructed so as to operate without causing a violation of any applicable Rules and Regulations.
  2. A new facility shall be designed and constructed so as to operate without interfering with the attainment and maintenance of State and National Ambient Air Quality Standards.
  3. A new facility shall be designed and constructed so as to operate such that the emission of air toxics does not result in an ambient concentration sufficient to adversely affect human health and well-being or unreasonably and adversely affect plant or animal life beyond the facility boundaries.
    - (a) The Permit Board may require the applicant to provide data necessary to evaluate the impacts of air toxics, including the predicted emission rates and ambient concentrations, when it deems necessary, considering factors that follow:
      - (1) The types of air toxics involved;
      - (2) The quantity of emissions involved;
      - (3) The physical characteristics of the facility (such as the location, size, etc.);
      - (4) The anticipated human health effects;
      - (5) The weight of scientific data supporting the health effects associated with the air toxics;
      - (6) The level of air pollution control equipment employed; and
      - (7) Such other factors as the Permit Board deems appropriate.
    - (b) When an air toxics evaluation is required by the Permit Board, the evaluation shall consider:
      - (1) An analysis of the chronic human health risks associated with the air toxics including the lifetime excess cancer risks to the most exposed individual from air toxics which are known, probable, or possible human carcinogens calculated or determined using appropriate pathways of exposure;
      - (2) An analysis of the acute human health effects associated with the air toxics utilizing the most current health-effects data published by EPA and/or recognized public health institutions or, in its absence, other extrapolative acute health-effects data; and
      - (3) Where applicable, an analysis of the impacts and effects of the air toxics on plant and/or animal life beyond the boundaries of the applicant's property.

(c) The carcinogenic risk analysis shall be considered to have satisfied applicable requirements of this regulation and Regulation APC-S-1 when the lifetime excess cancer risk to the most exposed individual outside the property boundary is determined to be less than  $1 \times 10^{-6}$ . When the excess cancer risk is determined to be greater than  $1 \times 10^{-6}$  but less than  $1 \times 10^{-4}$ , the Permit Board may either:

- (1) Require the applicant to demonstrate that, notwithstanding the calculated risks, public health is not threatened by the proposed emissions of air toxics; or
- (2) Establish permit conditions to limit or prohibit the emissions of air toxics.

When this excess cancer risk is calculated or determined to be greater than  $1 \times 10^{-4}$ , the applicant must demonstrate that, notwithstanding the calculated risks, public health is not threatened by the proposed emissions of air toxics.

4. The construction of a new facility shall be performed in such a manner so as to reduce fugitive dust emission from construction activities to a minimum.
5. Upon certification of construction in accordance with Section VI.D. hereof, the Permit to Operate issued hereunder shall be effective.
  - (a) The State Permit to Operate may, in the discretion of the Permit Board, contain requirements that the permittee establish by emissions data, test results, or reports that the facility can achieve and maintain the emission standards set forth in the Permit to Construct and, through the operation of said facility, will not interfere with the attainment and maintenance of State and National Ambient Air Quality Standards then in effect.
  - (b) Failure to establish that the facility can achieve and maintain the emission standards set forth in the Permit to Construct subjects the permittee to potential prosecution and penalty for operating in violation of its permit.
6. An application for a permit to modify or reconstruct a facility shall be treated as an application to construct and operate a new facility and must comply with all applicable standards.

B. Air Quality Models

1. All estimates of ambient concentrations of air pollutants shall be based on the applicable air quality models, data bases, and other requirements specified in the "Guideline on Air Quality Models (Revised)" (1986), Supplement A (1987) and Supplement B (1990) which are incorporated herein and adopted by reference.
2. Where an air quality impact model specified in the "Guideline on Air Quality Models (Revised)" (1986), Supplement A (1987) and Supplement B (1993) is inappropriate, the model may be modified or another model substituted. Such a modification or substitution of a model may be made on a case-by-case basis or, where appropriate, on a generic basis. Written approval of the DEQ and the Administrator of EPA must be obtained for any modification or substitution. In addition, use of a modified or substituted model shall be subject to public notice and opportunity for public comment.



C. Cancellation of Permit to Construct a New Facility.

1. The Permit to Construct will expire if construction does not begin within eighteen (18) months from the date of issuance or if construction is suspended for eighteen (18) months or more.
2. The Permit Board may extend the Permit to Construct for such additional time it deems appropriate if, at the time of the extension request, the applicant can demonstrate it meets all-requirements necessary to issue a new Permit to Construct.

D. Certification of Construction.

1. Upon the completion of construction or installation of an approved facility, the applicant shall notify the Permit Board that construction or installation was performed in accordance with the approved plans and specifications on file with the Permit Board. The previously issued State Permit to Operate shall become effective upon receipt of this notification by the DEQ.
2. The Permit Board shall be promptly notified in writing of any change in construction from the previously approved plans and specifications or permit. If the Permit Board determines the changes are substantial, it may require the submission of a new application to construct with "as built" plans and specifications. Notwithstanding any provision herein to the contrary, the acceptance of an "as built" application shall not constitute a waiver of the right to seek compliance penalties pursuant to State Law.

E. Additional Requirements for a Construction Permit or a State Operating Permit for a New Facility Significantly Impacting an Area in which a National Ambient Air Quality Standard is being exceeded or will be exceeded.

1. Definitions:

- (a) "Offset Policy." The Offset Policy is the Emission Offset Interpretive Ruling adopted by EPA in (or to be printed in) 40 C.F.R. Part 51, Appendix S, and any subsequent amendments thereto as of April 25, 1988. A copy of such ruling is attached hereto and is incorporated herein and adopted by reference as Regulations of the Commission except as follows:
  - (i) Notwithstanding Appendix S, the requirements for Offsets and Lowest Achievable Emission Rate will apply to all major stationary sources and major modifications, which have a significant impact on nonattainment of the applicable ambient air quality standard.
  - (ii) The source types specified in Section IV.B. of Appendix S of 40 CFR Part 51 will not be excepted from any conditions of the Offset Policy or any of the requirements contained herein.

All terms in Section VI. E. shall have the same definitions as those contained in the Offset Policy including the term "major stationary source" which is defined differently for purposes of this paragraph than throughout the remainder of Regulation APC-S-2.

- (b) "Nonattainment area." A geographical area of the state in which a violation of a National Ambient Air Quality Standard is occurring and which has been designated by the Commission or EPA as nonattainment with respect to that standard.

- (c) "Nonattainment Area Implementation Plan." A revision to the Commission's Implementation Plan for the Control of Air Pollution, such revision having been adopted by the Commission and approved by the U.S. Environmental Protection Agency pursuant to the Federal Act, for the purpose of attainment and maintenance of the applicable National Ambient Air Quality Standard in a nonattainment area.
- (d) "Reasonable Further Progress Schedule." An incremental reduction in total emissions of the applicable air pollutant allowed in order to provide for the attainment of the applicable National Ambient Air Quality Standard by the applicable statutory deadlines.
- (e) "Significance Levels." Concentrations of pollutants against which air quality contributions of a facility are compared to determine whether the facility significantly impacts air quality in an area. The levels are:

SO<sub>2</sub>      1.0 ug/m<sup>3</sup>, annual average; 5 ug/m<sup>3</sup>, 24-hour average; 25 ug/m<sup>3</sup>, 3-hour average

PM<sub>10</sub>     1.0 ug/m<sup>3</sup>, annual average; 5 ug/m<sup>3</sup>, 24-hour average

NO<sub>2</sub>      1.0 ug/m<sup>3</sup>, annual average

CO        0.5 mg/m<sup>3</sup>, 8-hour average; 2.0 mg/m<sup>3</sup>, 1-hour average

- (f) "Significant impact." Air quality impact which exceeds the significance level.

2. A new facility which is a major stationary source or major modification for the pollutant which contributes to violations of the National Ambient Air Quality Standard for which the area is nonattainment and which locates in or significantly impacts a nonattainment area must also meet the following requirements before a Construction Permit or a State Operating Permit is issued:

- (a) The facility must meet the lowest achievable emission rate for the applicable air pollutant.
- (b) When the applicable Nonattainment Area Implementation Plan contains a Reasonable Further Progress Schedule, the Permit Board must determine that, by the time the facility is to commence operation, total combined allowable emissions of the applicable air pollutant from existing sources in the area, the proposed new facility, and all other new facilities in the area shall be no greater than the total allowable emissions for the nonattainment area which represents reasonable further progress for attaining the standard as defined in the applicable Nonattainment Area Implementation Plan Reasonable Further Progress Schedule.
- (c) The owner or operator of the proposed new facility must demonstrate that all major stationary sources which are owned or operated by such person (or by any entity controlled by, or under common control with such person) in the state are subject to emission limitations and are in compliance, or on a schedule for compliance, with all applicable emission limitations contained in any applicable Rules and Regulations.

- (d) Exceptions will be made to the inclusion of fugitive emissions in the determination of whether a new facility is a major stationary source or major modification to the extent that those exceptions are made in the Offset Policy.
  - (e) At such time that a particular source or modification becomes a major stationary source or major modification solely by virtue of a relaxation in an enforceable limitation on the capacity of the source or modification otherwise to emit a pollutant, the requirements of these Regulations shall apply to the source or modification as though construction had not yet commenced.
  - (f) When the Reasonable Further Progress Schedule in an applicable Nonattainment Area Implementation Plan is determined to have become inapplicable due to consumption of all available growth allowance under such Schedule, the facility must meet the conditions of Section VI.E.3. below.
3. A new facility which proposes to locate in or near an area where an air quality standard is being or will be exceeded but for which no nonattainment area implementation plan has been adopted shall be subject to the following:
- (a) The facility shall be subject to the Offset Policy if:
    - (i) The facility is a major stationary source or major modification for the pollutant for which the standard is or will be exceeded; and
    - (ii) The facility is within or has significant impact in the area where the standard is or will be exceeded.
  - (b) In addition to the requirements of the Offset Policy, the facility shall not be granted a Construction Permit or a State Operating Permit unless the owner or operator demonstrates that:
    - (i) Emissions reductions to offset the new facility emissions will compensate for the adverse ambient impact caused by the new facility; and
    - (ii) The emissions reductions have been achieved.
4. The granting of a Permit shall not relieve the source of the responsibility to comply with other applicable requirements of this Regulation or with any other applicable Regulation or Law.

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Original Reg:	JUN 14, 1991	SEP 15, 1994	59 FR 47258
1st Revision:	JAN 26, 1994	MAY 2, 1995	60 FR 21442

## **VII. COMPLIANCE TESTING**

A. Where compliance testing is required in any permit it shall be performed as provided herein.

B. Requirements.

1. The emissions sampling and analysis will be performed in accordance with EPA Test Methods and with any continuous emission monitoring requirements, if applicable, unless otherwise approved by the Permit Board and the EPA. The Permit Board may establish an appropriate method for deviation from a test method.
2. In the event there is no applicable EPA Test Method or method required by Applicable Rules and Regulations, the Permit Board may specify an appropriate test method, taking into consideration any test methodology proposed by the applicant.
3. The results of the emissions sampling and analysis shall be expressed both in units consistent with the emission standards as set forth in any applicable Rules and Regulations and in units of mass per time.
4. Compliance testing will be performed at the expense of the applicant.
5. The Permit Board may monitor compliance tests and perform compliance tests. Proper notification of compliance tests shall be provided to the Permit Board in accordance with applicable Rules and Regulations or as specified in the applicable permit.
6. A facility which emits or causes to be emitted matter other than through a stack or a defined outlet of an air cleaning device may be classified inadequate in regard to control equipment. Facilities which comply with emission standards which specifically address and include fugitive emissions shall be presumed adequate provided all other applicable rules and regulations are complied with.
7. The emissions sampling and analysis report shall include but not be limited to the following:
  - (a) Detailed description of testing procedures;
  - (b) Sample calculation;
  - (c) Results; and
  - (d) Comparison of results to all applicable Rules and Regulations and to emission limitations in the permit.
8. Unless otherwise specified in Applicable Rules and Regulations or by a condition of a permit issued by the Permit Board, compliance testing must be performed when the facility is operating at capacity and is otherwise operating normally. In the event that a demonstration of compliance by testing is performed at less than capacity, the Permit Board may modify the permit to limit capacity of the facility to the rate at which compliance was demonstrated if the Permit Board determines the rate was not representative of the normal operation of the facility or compliance with Applicable Rules and Regulations was not demonstrated. In the event that the facility is not operating or being operated normally during a demonstration of compliance by testing, the results of such testing will not be accepted by the Permit Board as representative of normal operation and will be considered inadequate.

- C. Compliance testing will be required of all facilities for which there is an applicable New Source Performance Standard or National Emission Standard for Hazardous Air Pollutants in accordance with the methods and time frames allowed by the applicable standard codified at 40 CFR Parts 60, 61, and 63 and the Federal Act.

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## VIII. EMISSIONS EVALUATION REPORT

Where emission evaluation reporting is required in any permit, acceptable mathematical methods to demonstrate control adequacy shall include but not be limited to the following:

- A. An emission inventory including:
  - 1. Location and description of control equipment at each point source;
  - 2. Determination of all possible pollutants at each point source (characteristics, conditions, particle size distribution, etc.);
  - 3. Listing of all stack parameters at each point of emission, and
  - 4. Detailed description of input material (e.g., percent sulfur content, percent moisture, average BTU heating value, input rate, etc.); and
- B. A detailed engineering report including:
  - 1. Sufficient calculations to demonstrate uncontrolled emissions;
  - 2. Sufficient calculations to support or show design efficiency of control equipment;
  - 3. Sufficient calculations to demonstrate controlled emissions; and
  - 4. Comparison of calculated controlled emissions with the applicable emission standards as set forth in Regulation APC-S-1.

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**IX. PROCEDURES FOR RENEWAL OF STATE PERMIT TO OPERATE**

- A. A State Permit to Operate shall expire five (5) years from the effective date of said permit or within any shorter period of time deemed appropriate by the Permit Board and stated in the State Permit to Operate when issued.
- B. Not less than one hundred and eighty (180) days prior to the expiration date of the State Permit to Operate, the applicant shall make application for renewal of a State Permit to Operate if the applicant desires to continue operation of that facility. If the applicant submits a timely and complete application pursuant to this paragraph and the Permit Board, through no fault of the applicant, fails to act on the application on or before the expiration date of the existing permit, the applicant shall continue to operate the facility under the terms and conditions of the expired permit which shall remain in effect until final action on the application is taken by the Permit Board.
- C. The application for renewal of a State Permit to Operate shall be substantiated with current emissions data, test results or reports, or other data as deemed necessary.

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**X. STANDARDS FOR RENEWAL OF STATE PERMIT TO OPERATE**

A facility shall be reissued a State Permit to Operate for five 5 years or a shorter period of time deemed appropriate by the Permit Board provided it can adequately demonstrate either by stack emissions data, or by acceptable mathematical methods, or by visible emissions evaluation, or by a combination of these methods as follows:

- A. The emissions from said facility are in compliance with the emission limitations as set forth in its previously issued permit to construct and with any then existing applicable Rules and Regulations;
- B. That the operation of said facility is not interfering with the maintenance of State and National Ambient Air Quality Standards; and
- C. All provisions of Sections I.B. and II. of this Regulation have been met.

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## **XI. REPORTING AND RECORD KEEPING**

- A. The Permit Board may require in any permit the installation of sampling ports with safe access and the installation, maintenance and use of monitoring equipment.
- B. The Permit Board may require in any permit the maintenance of records relating to the operation of air contamination sources, and any authorized representatives of the Commission may examine and copy any such records pertaining to the operation of such air contaminant source. Copies of such records shall be submitted to the Permit Board as required by applicable Rules and Regulations or the permit or upon request.

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## **XII. EMISSION REDUCTION SCHEDULE**

- A. In accordance with Commission Regulation APC-S-3, it is the responsibility of each and every facility with actual emissions in excess of 0.25 tons per day of total air contaminants, and other significant sources, to have a Commission-approved emissions reduction schedule which shall set forth preplanned abatement strategies in the event an emergency episode.
- B. Required Information.
1. The emissions reduction schedule must have three (3) stages of reduction procedures: (1) Alert level reduction; (2) Warning level reduction; and (3) Emergency level reduction.
  2. Each level of reduction procedures must show the type and source of air contaminants, the amount of reduction of contaminants the time required to reduce, and the manner in which reduction will be achieved.
- C. The emissions reduction schedule shall be subject to review and approval by the Commission.
- D. An unacceptable emissions reduction schedule shall be returned to the applicant along with the Commission's reasons for denial.
- E. The applicant shall have not more than thirty (30) days to amend a disapproved emissions reduction schedule to conform with the emission reduction standards as set forth by the Commission.
- F. Any person aggrieved by the requirements to amend an emissions reduction schedule shall be entitled to a hearing.
- G. Should an applicant fail to submit an emissions reduction schedule within the allowable time period or fail to submit an amended preplanned strategy, the Commission will establish or revise said plan to cause it to meet the standards as set forth by the Commission.
- H. Such established or revised preplanned strategies will thereafter be the preplanned strategies which the applicant will put into effect upon the issuance of an appropriate order by the Commission.

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### **XIII. EXCLUSIONS, VARIANCES, AND GENERAL PERMITS**

- A. Institutions of higher learning, federal facilities or affiliated state agencies engaged in research and development may be granted variances from and/or exemptions to certain specific sections of this Regulation (APC-S-2) (except for the requirement to obtain a permit) for the development, testing or demonstration of experimental facilities, operations or contrivances that emit or cause the emission of air contaminants, provided formal written request is made to the Commission with sufficient data to support the experimental characteristics of said facility, operation or contrivance. The variance and/or exemptions granted pursuant to this section may not include major stationary sources, moderate stationary sources, major modifications, or moderate modifications.
- B. General Permits. The Permit Board may issue general permits to construct and general permits to operate as described below to classes of articles, machines, equipment, or other contrivances. A general permit shall be issued for a period of time not to exceed five years.
1. The Permit Board may issue a general permit for facilities which, in the judgement of the Permit Board, cannot by their nature and design have emissions of any pollutants in sufficient quantity to cause individual impact on air quality. Coverage under a general permit issued in this manner will be automatic and will not require the submittal of an application or other request to secure coverage. Section XIII.B.1 is not applicable to general permits to construct moderate sources, general permits to construct moderate modifications, general permits to operate a synthetic minor source, or Title V Permits.
  2. The Permit Board may issue a general permit for facilities which, in the judgement of the Permit Board, may have emissions in sufficient quantity to cause individual impact on air quality but which are minor. Coverage under a general permit issued in this manner will be determined by the staff pursuant to review of request for general permit coverage from a facility seeking such coverage. A request for general permit coverage must contain the following:
    - (a) The name and address of the owner and operator,
    - (b) The address or description of the physical location to the facility,
    - (c) A description of the facility, and
    - (d) A certification that all Applicable Rules and Regulations will be complied with in the operation of the facility.
  3. The Permit Board may deny coverage under a general permit to any facility and require the facility to obtain an individual permit.
  4. The Permit Board may revoke and/or modify a general permit or coverage under a general permit.
  5. The granting of coverage under a general permit does not imply or express exclusion from the requirements of any emission limiting regulation.
  6. Facilities which will be required to obtain coverage under a general permit to operate as a result of the deletion of the Air Emissions Permit Exclusion List (originally referenced in Section XIII.A.) shall not be required to submit a request for general permit coverage until six months following the date the general permit to operate is issued.

7. Facilities which will be required to obtain a State Permit to Operate as a result of the deletion of the Air Emissions Permit Exclusion List (originally referenced in Section XIII.A.) shall not be required to submit an application for such permit until six months following the date the Department decides that a general permit to operate will not be issued to cover the class of facilities to which the facility belongs.

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#### **XIV. PERMIT TRANSFER**

- A. "Transfer" shall mean any sale, conveyance, or assignment of the rights held by the applicant in any permit issued pursuant to these Regulations. Any change of more than 50 percent of the equity ownership of the permit holder over a sustained period which results in a new majority owner shall constitute a transfer. A new majority owner for purposes of this provision shall be an individual, partnership, company, or group of affiliated companies.
- B. A permit issued pursuant to these Regulations shall not be transferred except upon approval of the Permit Board.
- C. When requested by the Permit Board, an applicant for transfer approval shall submit information to demonstrate that it has the financial resources, operational expertise and environmental compliance history over the last five years to insure compliance with the terms and conditions of the permit to be transferred except where this conflicts with State Law.
- D. The application for approval of the transfer may be combined with an early application for permit renewal.

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## **XV. SEVERABILITY**

If any provision, section, subsection, sentence, clause or phrase of any of these regulations, or the application of same to any person or set of circumstances is for any reason challenged or held to be invalid or void, the validity of the remaining regulations and/or portions thereof or their application to other persons or sets of circumstances shall not be affected thereby.

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